



Paper No. 8

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In re Application of
Matko, et al.
Application No. 10/034,203
Filed: December 20, 2001
Attorney Docket No. 28679/04047
For: MOUNTING ASSEMBLY FOR
NIGHT VISION

OFFICE OF PETITIONS

DECISION GRANTING
PETITION

This is a decision on the reconsideration petition under 37 CFR 1.53(e), filed August 15, 2002, requesting that the above-identified application be accorded a December 20, 2001 filing date because drawings are not necessary for the understanding of the invention.

The petition under 37 CFR 1.53(e) is **GRANTED**.

The application was deposited on December 20, 2001. On January 30, 2002, the Office of Initial Patent Examination mailed a Notice informing petitioners that no filing date had been accorded to the application papers deposited on December 20, 2001 because no drawing was present, as is required by 35 USC 113. Applicants' first petition under 37 CFR 1.53(e), filed February 15, 2002, requested entry of the omitted drawings as of (1) December 20, 2001, if the drawings were found in the application file, or (2) February 13, 2002, which is the date the drawings were Express Mailed to the Office. Because the drawings were not present in the application file, the application was accorded a February 13, 2002 filing date on May 28, 2002.

In response to the original Notice and the May 29, 2002 decision, petitioners, represented by different counsel, request that the application be accorded a December 20, 2001 filing date based on the argument that drawings are not necessary for the understanding of the invention.

It is noted that the above-identified application contains 2 method claims. MPEP 601.01(f) states that it is the practice of the PTO to treat an application that contains at least one method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 USC 113 (first sentence.)

MPEP 601.01(f) also states that:

A non provisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figures in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP 601.01(g), so long as the application contains something that can be construed as a written description.

This application contains method claims. Therefore, the above-identified application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP 601.01(g).

MPEP 601.01(g) states that if an application is filed without all of the drawing figures referred to in the specification, a "Notice of Omitted Items" is mailed indicating that the application has been accorded a filing date.


In view of the above, the "Notice" mailed January 30, 2002 was mailed in error with respect to the lack of accordation of a filing date and is hereby partially withdrawn.

This application, as filed, is entitled to a filing date of December 20, 2001.

Pursuant to petitioners' authorization, deposit account no. 03-0172 will be credited the \$130.00 petition fee submitted on August 15, 2002.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of **December 20, 2001**.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 308-6712.


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